

ARGUMENT

ON BEHALF OF THE

CAPE COD SHIP CANAL COMPANY,

BEFORE THE COMMITTEE ON

HARBORS AND PUBLIC LANDS,

MARCH 12, 1884,

BY

SAMUEL W. McCALL.

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**The Petition of the Cape Cod Ship Canal Company.
Argument for Petitioner, by Samuel W. McCall.**

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE:

THE benefits likely to result to commerce and to the people of New England from the building of a Cape Cod Ship Canal have been so fully set forth by Mr. King, that it is not necessary for me to add more than a few words concerning the enterprise from a general point of view. While there are, as Mr. King has told you, about 2,000,000 tons of coal coming to Boston each year, it was estimated last year that there were brought to New England cities around Cape Cod about 4,000,000 tons; so that practically would double the force of what he said upon this point. Furthermore, with regard to our foreign commerce, we are hedged in on the west by the mountains under which the Hoosac Tunnel runs, and New York has the advantage of having the Erie Canal transport freight to the Hudson River, and it can then be towed in canal boats to the city of New York. We are about one hundred and eighty miles nearer Liverpool than New York. Now the canal boats which tow the freight to New York can be brought around through the sound and through the canal, which is practically inland navigation, to Boston, just as cheaply as freight can be carried the additional one hundred and eighty miles after it is put on board steamships; and it is fair to conclude that a large addition would be made to that part of your carrying trade which deals with the products of the West. Freight could be transported from Chicago

through the sound and through the canal to Boston and thence to Liverpool as cheaply as it could by way of New York alone.

In regard to the proposed change of route, it must be conceded that the location we ask for is the best one. It is only necessary to consider the proposed location with reference to changes made necessary in the Old Colony Railroad. In all the canal charters that have existed, not more than one crossing for that railroad was contemplated, although there was a likelihood under every one of those charters of taking the route now asked for. There was not only a likelihood of this location being selected, but, upon the whole, it seemed to be the favorite location with the engineers; so that previous legislatures, upon considering the question whether or not there should be more than one crossing of the Old Colony Railroad, have decided virtually upon the same point now pending before this committee, that the railroad should cross but once. Nothing has been done under this charter that can in any way injure the Old Colony. That railroad, if we are permitted to change our route and go down Back River, would stand precisely the same as if we had adopted that location originally. It has not done anything towards changing its location to conform to the present lines of the canal; and if it has an agreement as to the point of crossing, it has done nothing, it has made no expenditure under such an agreement, so that its rights have not become vested.

Now, the effect of the railroad changes, it seems to me, has been very much exaggerated. An increase of three quarters of a mile can be added to each branch, which would be entirely imperceptible to the people of the Cape; and, furthermore, this is to be considered,

that when the Old Colony Railroad trespassed upon the route of the canal, it had ample notice. The canal project had been discussed and favorably considered by legislatures and by government and other engineers for two hundred years. The canal had been located and almost excavated by nature. It was inevitable that some day it would be constructed. Boston and our New England cities out in one corner have a right to the obvious natural advantages of their position. If by cutting across a little isthmus they can save ninety miles of navigation, bring themselves nearer the coal and cotton of the country, avoid many perils of navigation, and practically destroy their isolation, it seems to me they have a right to that, gentlemen, and that right cannot be taken away from them by any unimportant railroad trespassing across that line. The claims of commerce are supreme, and if a railroad goes there it goes there with ample notice and at its own peril. Furthermore, there was notice upon the statute books. In 1870 a charter was passed incorporating the Cape Cod Ship Canal Company, requiring this railroad to change its location so as to cross said canal but once. They built the Woods Holl branch in 1873, when that same charter was in existence, and they built it with notice that the canal could be obstructed with not more than one bridge. Now let us see what that proposition for us to build them an extra bridge means. Suppose we build a bridge for the Woods Holl branch: the entire cost of that branch to the Old Colony Railroad, as gathered from the reports of the Railroad Commissioners, was about \$98,000.* To construct a bridge across it with a

* It was a fair inference from the testimony of Superintendent Kendrick and President Choate that the Woods Holl branch substantially was constructed by the Old Colony Railroad. The natural place then in which to look for the cost of the branch would be in the returns of the Old Colony,

pier in the middle of the canal, in which a swift current from the ocean will be moving, and an abutment on each side, would certainly cost \$150,000. That is substantially what the cost of that bridge has been estimated to be. In addition to the \$150,000 for the bridge, it would be the duty of the canal company forever to maintain, operate, and keep it in repair, which could not be done for less than \$6,000 or \$7,000 a year, which would be the interest of \$150,000 more, and it would when completed be an impediment in the free navigation of the canal. We have here the modest request that the canal company spend \$300,000 and obstruct a great ocean highway, to the perpetual inconvenience of commerce, in order to protect a little branch road that cost the Old Colony \$98,000, when that branch road was built with notice existing upon the statute books that a canal might be constructed there, and only one crossing could be permitted. I submit that it is exceedingly unfair to make any such request as that, especially when the branch is not obliterated. If we have one crossing, the Woods Holl branch could go up to Monument and cross upon the bridge over the Cape line, and the increase in distance would be perhaps a mile and one half.

from which it appears that only \$98,000 was spent by that road. An error, however, arose from the fact that after the date named for consolidation and before it was consummated, the branch was in part built, and was charged to the Cape Cod road. Mr. Choate clearly made the same error in his testimony when he says that the Old Colony Railroad paid \$2,000,000 for the Cape Cod road, and "afterwards completed the Woods Holl branch at a cost of between three and four hundred thousand dollars." Where does this expenditure appear in the returns of the Old Colony Railroad? Clearly the cost of this branch should not be computed in the cost of the Cape Cod road, and *also* as an independent expenditure of the Old Colony. But even if this branch cost the Old Colony \$400,000, the force of the argument remains that the canal company should not be required to make an outlay substantially equal to the entire cost of the branch, simply to prevent a short increase in its length.

In regard to the damages resulting to the Old Colony Railroad by reason of but one crossing over our new location, it is apparent that they have been grossly exaggerated. The officers of that road base their estimates upon train mileage, at the rate of one dollar a mile. They compute the extra number of miles that would be run by their trains in the aggregate, and claim that the increased expense of operating the road would be about \$7,000 a year, — and you must remember, Mr. Chairman, that they compute the whole increase on the basis of the trains over the Cape line, which has nearly twice as many trains as the Woods Holl branch. If, instead of crossing down near Buzzard's Bay, on the line of the Woods Holl branch, they would come up to Monument and cross there, and figure the increase on the basis of their train mileage upon the Woods Holl branch, that magnificent sum of \$7,000 would be divided by two. Those figures are manifestly incorrect; they are many times in excess of what the real detriment or cost to the road would be. Mr. Kendrick stated the elements that made up the cost of train mileage. There was not a single element that he stated that would be increased at all, and only one which Mr. Benton suggested afterwards. The cost of general management of the road, for instance, goes into the cost of train mileage. Because there was a little extra jog in the road, it would not be necessary to employ any more presidents and general officers to manage that road. Furthermore, if the line was increased a mile and a half or two miles, they would not employ any additional hands. They would have the same hands run their train to Provincetown; so there would be no extra expense for labor. And again, this one dollar a mile was the average estimate for the whole of the Old Colony system,

which included trains near Boston; and it was conceded that trains down on the Cape are very much shorter than trains nearer Boston. There was only one element in which the cost would be increased, which Mr. Benton suggested. The cost of removing ice and snow would be just as great, he told us, on a branch over which one train ran as it would over a road where twenty ran.

Now it appears by the report of the Railroad Commissioners for 1871, which was the year before the Old Colony Railroad absorbed the Cape line, that the total cost of removing snow and ice on the Cape road from Middleboro to Wellfleet, a distance of seventy-two miles, was \$258 for the year, or about three or four dollars a mile. It seems entirely clear that the actual cost to the Old Colony for operating its branch over this route, if it is increased a mile or a mile and a half, would not be \$1,000 a year, — a sum not comparable with the cost and damage of an additional bridge; and it is not by any means clear that they would not charge people extra fares, and if they did, it is possible that they might get a larger income than the amount of damage would be. But whatever the legal damage, the canal company would be liable to compensate the railroad.

Then there is a certain damage spoken of by Mr. Kendrick, which he could not estimate in money, — a sentimental damage from having a drawbridge. He said he could not tell just how much it would be worth to have a drawbridge there, irrespective of any element that he could figure upon and determine. He had a list of some very frightful disasters that had occurred upon drawbridges ever since the foundation of rail-roading, although he admitted that upon the five draw-

bridges of the Old Colony Railroad they had not lost a single life since the railroad was built. But accidents are liable to happen anywhere, as the history of the Old Colony Railroad amply shows, and this element of damage is altogether too contingent to be considered at all.

Upon the question of the sufficiency of the indemnity deposited at the State House, the chief item to be considered is the value of the right of way of the canal, of which nearly one half in amount but not in value has been already purchased. We had a number of able guesses upon that point, but only one witness. Mr. Lockwood testified that he had made special efforts to ascertain the cost of the right of way, that he had purchased about four hundred acres of the nine hundred acres comprised in it, and that he concludes that the balance of it can be purchased for \$40,000, which is, on the average, eighty dollars per acre. In the report of the Railroad Commissioners of 1872, the cost of the construction of the Cape Cod Railroad, now the Old Colony Railroad, is given, and among the items it appears that the total cost of the right of way of that road from the town of Middleboro to the town of Wellfleet, a distance of seventy-two miles, including depot grounds, and including fencing, of which there were presumably one hundred and forty-four miles, was only \$93,000. This is Cape Cod land, as it was when the Old Colony Railroad went there, when the Cape was more populous than it is to-day; and if its cost affords any criterion whatever, Mr. Lockwood's estimate of \$40,000 for the unpurchased portion of the canal route is extravagantly large. If we add to this estimate \$20,000 for any possible unpaid bills for labor and material, there will remain \$140,000, which is threefold security for any legal damage the Old Colony Railroad can suffer.

Again, before the Old Colony Railroad can be disturbed, the canal company must construct a bridge and the new railroad to the satisfaction of the Railroad Commissioners: so that does not come in as an element of damage in any way, for which indemnity should be given; and, further, before we reach the Old Colony Railroad, we will have to construct at least two miles of the canal, which of itself will have demonstrated our financial strength, so that there would not be any special need of indemnity.

In regard to our request for a scientific tribunal to pass upon the question of locks, I have simply to say that if locks are necessary for the bridge, they are ten times more necessary for the canal. The bridge may cost \$150,000. The canal will cost several millions of dollars. If locks are necessary, the whole value of the canal property depends upon having them. If they are not necessary, the canal company is especially interested in not having them, for they would be a nuisance in the canal and would cost two or three millions of dollars. Even with regard to the safety of the bridge alone, the canal company is most interested, because it and not the railroad company must keep the bridge in repair. The decision of the question, therefore, should be left entirely with the canal company; but, if any tribunal is to be appointed, it has a right to ask the best obtainable tribunal.

Now it is a statement that commends itself to the common-sense of every man, to say that the question of the effect of the flow of tides between two seas of a different level should be decided by a board of competent hydraulic engineers. If you have a question of surgery to be decided, you will select a surgeon, if of chemistry, a chemist, and if of law, an educated lawyer. Take a

man who is not an expert, who does not know any law, for instance, and he is constantly getting perplexed over small quibbles that would not disturb a lawyer in the least. Take the science of engineering and tell me what progress would have ever been made if the old-womanish fears of laymen had been permitted to prevail. A celebrated English engineer who was combating the claim of a board of directors regarding the success of a proposed operation said he would vouch for its success with his head. When ordinary people are alarmed, a skilful engineer looks at the matter coolly, and his decision is apt to be correct. Thus they make it safe, as in Holland, to build great cities upon the sea-shore which are twenty feet below high tide; they pierce mountains from different sides and calculate the meeting of the opposite shafts to the breadth of a hair. In the present case, the possibilities of Mr. Savary's tides are perfectly harrowing. An inexperienced tribunal might be overcome with the prospect of Sandwich converted into a vineyard sound and Cape Cod washed out to sea, and would probably decide wrong. A board of competent engineers, on the other hand, would be apt to look at the matter from a purely scientific standpoint, and would almost surely decide right. The Railroad Commission is an admirable commission for the purposes for which it was created; but there is not a civil engineer on the present board. It is composed of an eminent lawyer, a skilful locomotive engineer, and a successful man of business; and I submit, with all due respect, that it is not the proper tribunal to pass upon questions of this kind.

Now, in regard to the general matters that have come in at this hearing. It is urged by the Old Colony Railroad that the whole thing is a fraud; that it is a

stock-jobbing arrangement; that one person is the sole subscriber to the stock; that that person is also contractor; that things terrible are likely to ensue. It was stated at the outset that there existed a universal distrust among people in the vicinity of the canal, and witnesses would be called upon that point. The testimony you have heard, and you must be impressed with this circumstance, that the further off the witnesses were from the spot, the more positive their testimony was. We have had men here from Pocasset, from Wellfleet, from Provincetown, none of them nearer than eight or ten miles to the place where operations are being carried on, and some of them forty miles away, not one of them having any personal knowledge of Mr. Lockwood, not one of them having made any inquiries about him, and very few of them having any interest, except a wholly visionary interest, and they were very willing to testify as to his irresponsibility. You will remember the gentleman from Hyannis. He specially testified to the irresponsibility of Mr. Lockwood, but he admitted that he never had inquired of him; he did not know him personally, and yet he was sure he was an irresponsible man. This gentleman lives, I believe, some twenty miles from the route of the canal, and he is fairly illustrative of the witnesses that they called.

Then the coming here of these gentlemen was suspiciously spontaneous. The Old Colony Railroad had nothing to do with getting them here. Mr. Benton announced that he did not know anything about their testimony, but in some providential manner the list of the names had got into his hands, and he would call them. At the same time it was to be observed that none of them was hostile, and all fitted in remarkably well. One gentleman came on and made a very strong

legal argument against a certain position of the corporation. Other gentlemen assailed a decision of Judge Holmes with a great deal of ability, and Mr. Snow, and two or three other witnesses, in talking of irresponsibility, took occasion to say that if *Mr. Whitney* or some responsible party had hold of this matter, then they would not have any misgivings; *Mr. Whitney* was perfectly responsible. Up to that time I had supposed that Mr. Whitney was a friend to this enterprise. I knew that he had taken \$7,500 of Mr. Lockwood's money, and had unloaded certain property he had down on the Cape upon Mr. Lockwood. I supposed that, having himself once failed to do anything towards construction under a most liberal charter, he would at least have some respect for a man who was expending his money to carry out the work in which he failed. But this continual eulogizing of Mr. Whitney led me to mistrust: it seemed so evidently to be done for a purpose; and the next day he appeared upon the stand, the members of the committee having been conveniently put in an idolatrous frame of mind by the testimony, so that he might have an additional weight as a witness. Well, I do not know how it struck the committee. Certainly it struck me that Mr. Snow's high opinion of Mr. Whitney was amply corroborated by Mr. Whitney's opinion of himself. I never saw a witness cover so much territory, except the same witness last year. He not only knew about all matters relating remotely to the canal, but he also knew about the dredge, and Mr. Lockwood's private affairs. I think if he had stopped at the end of his direct examination the effect would have been a good deal like the effect of a wave testified to in a canal hearing last winter before the Committee on Harbors and Public Lands which, we were told,

was a "reg'lar rips cudgeon of a wave." But when we came to look into Mr. Whitney's testimony, when we found that he was talking about loose charters, and had asked the Legislature to grant him a charter which gave the public no sure protection whatever, when he said this dredge had been offered to every dredge builder in the land, and then admitted that he knew of not a single dredge builder in the land to whom it had been offered, I submit that he did not stand before this committee in any enviable light. Dictation from Mr. Whitney comes with a poor grace in this canal enterprise. He should have come here with apologies upon his lips for his failure in having taken from you a liberal charter and not having done anything under it, simply making it more difficult for the man who some time might intend to prosecute the work.

Now, in regard to the contract for the construction of the canal, it simply means that Mr. Lockwood is to have the canal for building it. Certainly nothing could be more fair than that; and, whatever Mr. Lockwood may have done or not done in the way of figuring, it is clear that the estimate made in that contract as to the cost of the canal is, on the whole, nearer right than any estimate that has ever been made. It has been estimated that this canal would cost from two and one half millions to fourteen millions of dollars. The minimum estimate was made by Mr. Herschel, who was the chief engineer of the old company, and he made that estimate for the purpose of enlisting capital in the enterprise. He admitted that unless the greatest care was taken the cost would largely exceed his estimate. And furthermore the canal proposed by Mr. Herschel was about two thirds as large as this canal; so that, taking everything into consideration, the low price that he

named for doing the separate items of work, and the unforeseen obstacles that might be encountered, it is probable that even Mr. Herschel's canal, as unusual public works in this country always cost more than was originally calculated, would cost at least \$5,000,000. The contractor takes some great risks, for which he should be paid. If quicksands should be encountered, or if extensive ledges should be met with, the cost of the work might easily exceed all estimates; so that, whatever Mr. Lockwood may have done with regard to "figuring" the cost of the canal, he has the price named in the contract about right, if due weight is given to the uncertain elements of the problem. The canal is to cost seven and one half millions, which is, in round numbers, about one million dollars per mile; and it is provided that Mr. Lockwood shall subscribe for the stock, and that there shall be offset against assessments due from time to time upon that stock, whatever he has done under the contract.

There are certain extra expenditures, such as depositing \$200,000 and the purchase of the land, which are not taken into account at all in the manner of settlement. For seven and one half millions of the securities Mr. Lockwood builds the canal and furnishes money to meet all the requirements of the corporation. Now, if he entertained speculative purposes, he would make haste to have all moneys advanced by him under his contract credited upon his stock. He would have got credited with every dollar invested, so as to make it appear that he had a large amount of capital paid in; or he would have paid for some separate block of stock, so that he could put it upon the market. But, contrary to this course, there was assessed and paid upon every share of stock fifty cents, to meet the requirement of the char-

ter, that \$25,000 should be spent before a certain time, and then there was a second assessment of \$9.50, making \$4,975,000 more, or \$5,000,000 in all; so that this capital stock to-day has been fully subscribed and assessed. Now I submit that there is no way under the law in which a certificate for a single share of stock can be issued until five miles of the canal have been dug,—and five miles of canal would demonstrate the financial strength of the corporation in the strongest possible manner. The procedure has been such as not only no stock jobber would pursue, but it has been such as to make stock jobbing impossible.

Then very much has been said here to the effect that that this corporation is subject to Sects. 85 and 86 of the general law. It was provided in the charter last winter that the corporation shall be "subject to all the liabilities set forth in all general laws which now are or may hereafter be in force relating to railroad corporations, so far as they may be applicable, except as hereinafter provided." The purpose of Sects. 85 and 86 of the general railroad law is very clear. When a railroad corporation is asking the right of eminent domain, by which right it can take the property of the people, the Legislature says that, before it shall take any man's land, it shall have a certain amount subscribed and paid into the treasury of the company. The simple purpose of that requirement is to protect the public so that it may not be made the prey of irresponsible parties.

Now Sect. 19 of this charter makes an enactment upon that precise point. It says,

"Said canal company may locate but shall not begin to construct said canal, or take any land or property therefor, until it shall have deposited \$200,000 with the treasurer of the Commonwealth, as

security for the faithful performance of the obligations imposed by this Act, and for the payment of all damages occasioned by the laying out, construction, and maintenance of said canal, or by taking any land or materials therefor, and also of all claims for labor performed or furnished in the construction of said canal, which sum shall remain with the treasurer until such time as said corporation shall have actually received into its treasury and expended the sum of \$1,000,000 in the construction of said canal, and shall have produced proof satisfactory to the Board of Railroad Commissioners that it has settled all damages incurred or to be incurred in the location and construction of said canal."

That is what should be the public protection, what should be the guarantee of the faithful performance of the obligations of this Act, what should be the security of the land-owner and of the laborer, and that being expressly stipulated in the charter, it being "thereinafter provided," it seems to me that it is almost too clear for argument that the parallel sections of the railroad law upon the point do not apply. Certainly Judge Holmes decided in that way when it was brought before him. It seems to me that any man who had any claim whatever to the title of lawyer would decide that the Legislature clearly did not intend to have this company deposit a security for the public, for the land-owner, for the laborer, and then at the same time make it subject to the general railroad law, which provides security upon precisely the same points; and I submit that there cannot be much question of the propriety of that decision.

Now let us see what the proposition of the Old Colony Railroad amounts to when it asks that we be made subject to the general law. It would have been well enough if it had been inserted in the Act in the first place that fifty per cent of the capital should be subscribed, and twenty per cent of that fifty per cent should be paid in, that is, ten per cent of the whole. That

would have been all well enough; but here the Legislature has made a charter,— and a charter is simply a contract between the Commonwealth and the parties named in that charter,— here the Commonwealth has made a contract with William Seward, Jr., and his associates. Mr. Lockwood, a person not named in that contract, in looking over the enterprise, considers that possibly he may undertake it, and he employs the best counsel, he gets the best legal talent in the Commonwealth to examine this Act, and tell him just what the financial liabilities are under it, and he is told by his attorney that the provision for the payment of \$200,000 into the treasury of the Commonwealth is in lieu of the requirement of the general law; and that opinion stands corroborated by a justice of the Supreme Court.*

Now, Mr. Lockwood having confidence that the Commonwealth of Massachusetts will keep its contract, upon the basis of that charter makes a contract with these parties for the construction of the canal, and upon the faith of that charter he invests a large sum of money, a large fortune, in the enterprise. I submit that his rights have become vested; and it is a grave question whether the Legislature could take them away even if it would. It would be a proposition that could be made with perfect propriety in Turkey, or Egypt, or Mexico; but when any man or corporation comes to the State House in the Commonwealth of Massachusetts and asks that the vested rights which a person has obtained by reason of a contract made upon the faith of a contract between the State and other parties shall be taken away, there should be some potent and convincing reason; no mere pretext should suffice. To take away those vested

* The full bench has sustained the decision of Mr. Justice Holmes.

rights is substantially what the Old Colony Railroad is asking here. Mr. Lockwood, under his contract, has subscribed to that capital stock; he has made large expenditures under that contract; he has a right to that capital stock. But what do you do if you pass the law that Mr. Benton asks you to pass? In the first place, you decide in effect that Mr. Lockwood has no right to that capital stock, you ignore his subscription entirely. You say fifty per cent shall be subscribed and twenty per cent of that shall be paid in by parties whom the Railroad Commissioners shall approve of. There will be inevitable litigation as to the ownership of the franchise, and the effect may be to prostrate and stop the enterprise. That is the simple purpose for which it is offered. That is the secret of the Old Colony's pretended friendship to the public. If such a provision had been in contemplation when the contract was made, if the parties had in view any such requirement as that, it would have been perfectly proper, and could have been complied with. But here you are inserting a requirement which the Legislature disregarded last year as ineffectual, substituting for it a more certain security. And is it proposed to restore this rejected provision in the interest of the public? The purpose is so transparent that no child could be deceived. This proposition is offered simply in the hope that if enacted into a law there would arise such confusion of rights and uncertainty as to the ownership of the franchise that Mr. Lockwood would not embark any more capital in the enterprise.

Now, it is further provided in this Old Colony bill that all damages shall be estimated according to Sects. 94 to 112 inclusive of the general railroad law. What does Sect. 94 provide? It provides, in effect,

that no railroad corporation shall take, by purchase or otherwise, or enter upon or use, except for making surveys, any land or other property for the construction of its road, or of any branch or extension thereof, until the county commissioners have decided how the highway shall be crossed, and whether or not it shall be at grade. This provision would stop work instantly upon the canal, and for what purpose? To have the county commissioners deliberate and decide whether the highways shall cross the canal at grade! The Act already provides how the highways shall cross. The bald statement of that proposition is sufficient without any argument.

I do not know what may be the sentiment of any member of this committee, but if I were a sworn enemy to this canal, if I were almost absolutely subject to the Old Colony Railroad, nevertheless, if there still remained to me one ray of conscience, upon the general question of the sacredness of contracts, I should certainly repudiate this perfidious bill. That proposition would not give the public any such security as is provided by the present Act, for I assume that no one would think of subjecting us to Sects. 85 and 86 of the general railroad law and not return the \$200,000. The State, having provided something in lieu of the general railroad law, should not now, having taken our \$200,000 provide that the general law shall apply also.

You are asked to perpetrate not only a gross private but a great historical wrong. The Commonwealth for two hundred years has fostered this canal enterprise. She has encouraged private capital to embark in it, and to this end has expended large sums of her own money in elaborate surveys. She has granted and repeatedly extended most liberal charters. She has called upon

the national government for aid. No government was ever more strongly committed to any policy than is this Commonwealth by her legislatures to the construction of a Cape Cod ship canal. And yet in what position is she asked to put herself? Previous canal companies which did nothing had their charters frequently extended. The present company has in a short time embarked several hundred thousands of dollars in the enterprise, and it is proposed substantially to take its charter away. And the Commonwealth could only explain her action by saying, "To comply with the terms of a charter is a ground of forfeiture. I have only created canal companies that the canal might *not* be built. This company is taking me at my word and I will destroy it." And to complete her shame she would be compelled to add, "I do this at the beck of a railroad corporation to which the canal may prove a commercial rival to the great benefit of all my people."

Now in regard to the standing of the enterprise among the people of Sandwich generally. An attempt was made to impart to the coming here of two or three gentlemen from Pocasset and one or two summer residents the appearance of a great popular uprising. There was not one of the men called by our friends who knew anything about the enterprise or Mr. Lockwood. But we produced some of the most respectable citizens of Sandwich, — the chairman of the selectmen, the town clerk, and the people with whom Mr. Lockwood has traded, the land-owners in the immediate vicinity of where the work is being prosecuted upon the canal, and whose land has been invaded, — and they all say they never heard any question of Mr. Lockwood's responsibility, and they were all entirely satisfied with the existing state of things. In regard, then, to

the issue which our friends have raised, we produced the best obtainable witnesses; they produced witnesses who had neither knowledge nor opportunities of knowledge, and they are entitled to about as much credit from you as would be as many witnesses from the moon.

Now, in regard to Mr. Quincy A. Shaw. We were not responsible for the introduction of his name here. We said that Mr. Lockwood had complied with the requirements of the charter, had put two hundred thousand dollars where it would be very difficult for him ever to get it back, unless his dredges should strike the shores of Buzzard's Bay, that he had besides that two hundred thousand dollars spent one hundred and fifty thousand in the enterprise, not now including the cost of the dredge, and we relied upon this large expenditure of money, — three hundred and fifty thousand dollars, — thinking it would demonstrate the man's good faith and his intention to put the work through. Of all the previous companies that had been chartered, not one had ever spent a cent in connection with the enterprise, unless it was to have a dinner. Here was a man at the outset who had spent three hundred and fifty thousand dollars, and we thought we could safely rest the case at that point. The Old Colony Railroad, by their counsel, saw fit to cross examine Mr. Lockwood upon that matter, and they wanted to know where he got his money. Now that was precisely like the question of taxation spoken of here this morning. It was agreed by Mr. Benton and Senator Galvin that that had nothing to do with the Old Colony Railroad. The question where Mr. Lockwood got his money was no business of the Old Colony Railroad; that road should bend its energies to looking after its own interests, and not attempt to meddle in the private affairs of a rival corporation;

but they disclosed the interest of a very eminent gentleman of Boston, a man who, whether we regard simply popular rumor of his wealth, or whether we regard his standing in the community from the part he takes in public enterprises, is certainly one of the leading citizens of the Commonwealth, — Mr. Quincy A. Shaw. It appeared that he was to furnish money, and had put at least two hundred thousand dollars into the enterprise. Now it strikes me that, having brought that name in here, that of itself negatives completely the idea of stock jobbing. They have produced a man who is entirely able to put the canal through, whose reputation is the farthest from that of a stock jobber, and who would not put \$200,000 in unless he intended to get it out again, — and the only way he can get it out is by constructing the canal.

Mr. Whitney told us that he had been to the State House and found that Mr. Lockwood owned some 1,900 shares of the Lockwood Manufacturing Company. The capital stock of the company was \$300,000 and he owned \$290,000, and he further on discovered that \$60,000 of the \$290,000 was pledged to Mr. Shaw. The inference it left upon my mind was that it was pledged to secure the payment of these bonds; but it turned out that all of it was pledged nine months or longer before this matter came up. I think we are indebted to Mr. Whitney for bringing this in here, because it proved two things: first, that Quincy A. Shaw has great confidence in Mr. Lockwood; and second, that when Mr. Shaw makes an investment he does not publish it in the papers. This Lockwood Manufacturing Company, which originated in 1880 and has grown to be almost one of the institutions of Boston, has been built up, it seems, with Mr. Shaw's money, and

no man ever knew it, and no man would ever have known until this canal was completed, that Mr. Shaw had anything to do with the canal, if it had not been for the efforts of the enemies of the enterprise.

When Mr. Choate was upon the witness stand, I asked him if the Old Colony Railroad were properly secured for prospective damages, and if it were secured as to its crossings, whether it had any further interest in this legislation in any way. Mr. Choate replied that if they could have two bridges, if they could have indemnity furnished them as was provided in the Act, the interest of the Old Colony Railroad would cease; but then he added, "there is this simple matter about the general law." Now, I submit that that "simple matter about the general law" stands precisely the same as this matter of taxation, with regard to the Old Colony Railroad, which it was agreed upon a little while ago was none of the Old Colony Railroad's concern. I submit that it is a public matter, and that railroads should not be permitted to come into the State House, to come before any committee, and appear as the guardian of the public and take a mere philanthropic interest in legislation. The moment you concede any such right as that to them, you have sanctioned a great public evil. Railroad companies are institutions having a great power, even when they run over the body of the country; but when they run over land like Cape Cod, hardly wide enough in some places for a railroad, we all know the relative influence would be much greater. When we consider these great corporations and their immense capital, all wielded by one hand, their thousands of intelligent employés, their great local influence, and the probability of their combining together, let it be admitted that they may take a general philanthropic

interest in the people and look out for their interests, and the people become bound hand and foot. You may as well abolish your Legislature, you may as well delegate your legislative powers at once to the presidents of the various railroad corporations. As our charter stands to-day, the Old Colony Railroad is amply protected at every point. It can have no interest in the greater portion of the bill it presents to you. Throughout this whole hearing it has been urging matters which it had no right to urge, and, for having attempted to usurp the duties of the attorney-general, it should receive your rebuke.

Perhaps I should say one word about the testimony of Mr. Moses Williams. I willingly concede Mr. Williams's general excellence as a lawyer, but I cannot exactly understand his attitude in this canal matter. He was down at Sandwich at a certain public meeting, and, fired by the legal eloquence of Mr. Choate, he goes to work and brings a bill in equity, in which he states substantially the same points made by Mr. Choate. That bill in equity came into court and was dismissed with costs upon demurrer. It was then carried to the Supreme Court. The amount at issue was about \$150. It was all right enough for Mr. Williams to bring the suit; but when he takes it so much to heart that he thinks he has become a sort of *pater patriæ* to Sandwich, and must look out for the interests of the people there, must have the decision of Judge Holmes set aside, and that the question of dumping materials in Buzzard's Bay should be decided by the Legislature, I submit that he is making some very extraordinary requests. And of all the indifferent and bad law that I have heard from Mr. Williams in this canal matter, I do not think I have heard anything

quite so bad as this proposition, that, under the charter, Mr. Lockwood, for labor and material, can draw the \$200,000 out of the treasury. This charter is founded upon the general railroad law. In matters where the charter is silent, it is expressly liable to the general railroad law, and we must go to that law for interpretation. It is expressly provided by the general railroad law that this matter in regard to labor and materials shall not apply to a chief contractor or contractors for any separate part of the work, but only to those who in a subordinate capacity furnish labor and materials. That of itself is a conclusive objection; but when you consider that the Supreme Court sitting in equity is to distribute these funds, and when you consider that Mr. Lockwood, the subscriber of the stock, the man who is to furnish the public a guarantee, comes in and asks the Supreme Court in equity to give those funds to him, I think any man who knows anything about law would say the proposition is preposterous. However, gentlemen, if you have any misgiving about it, put it in the bill, but I doubt if you can make your legislation so thorough that better points cannot be made against it than that.

Now I do not want to say that the Old Colony Railroad is guilty of maintenance, but I do say this, that, up to the time of that meeting in Sandwich, so far as any litigation is concerned, the course of the canal company was as smooth as a summer sea; within two days after that meeting a suit in equity was brought against the company; the chief plaintiff in that bill was an employé of the Old Colony Railroad residing in Sandwich; the grounds alleged were the grounds stated at that meeting by the president of the Old Colony; the attorney in the suit was present at that meeting,

and the president of the Old Colony Railroad admitted facts before this committee that prove that he took an interest in that litigation. Now it does look as if the Old Colony Railroad was responsible for that suit.

Furthermore, I simply want to call your attention to a part of the testimony that came out here, which makes me distrust every statement that has emanated from that quarter since this hearing began. Mr. Kendrick was called upon the stand, and, in regard to this litigation, he was asked if the Old Colony Railroad had a depot master, or any one in its employ by the name of Jedediah Briggs. The title of the suit as it stood in court was, Jedediah Briggs *et als.* v. The Cape Cod Ship Canal Company, Briggs's name being the only name which appeared in the title, and he was asked if there was in the employ of the Old Colony Railroad any one by the name of Jedediah Briggs. Now it so happened that one of the "*als.*" was Edward Ellis, who was depot master of the Old Colony Railroad at North Sandwich, and also the plaintiff who swore to the bill. Mr. Kendrick answered that he did not know a man by the name of Jedediah Briggs in the employ of the company. But Edward Ellis was an employé of the company, and was a plaintiff in that suit, when, as a matter of fact, the inference of the committee, if we had not gone into a cross examination of Mr. Kendrick, would have been directly opposite from the truth. It became apparent to the committee that a little fraud was being attempted. If this little fraud appears upon the surface, what large frauds may not be hidden underneath.

I do not know that I care to weary the committee by talking any longer upon this testimony. The fact that the \$350,000, excepting \$25,000, has not been credited

to Mr. Lockwood upon his assessment is rather evidence of good faith than anything else. It is entirely immaterial under that contract if not a dollar is credited to him upon his assessment until the canal is absolutely constructed. Certainly, if nothing has been credited to him upon his assessment, he cannot dispose of the stock.

A good deal has been said about the effect of this canal upon the sailing industry of the Cape. I do not know very much about shipping matters, but I have an idea that the general tendency of the age is to the employment of steam; and if this tendency is followed out, ultimately the use of sail power will be superseded by the use of steam. That is entirely irrespective of the canal; but if sail power is to continue upon the water, certainly if you open new avenues upon the sea, the sail power will have the advantage of that just as much as the steam power will. The people of the Cape are an enterprising people, and, with regard to the employment of sailing vessels, if any one in the world can use them, they can; and it is difficult to see how this canal will have any influence, at least against them. The Old Colony Railroad injured sailing vessels because it introduced an entirely new element, a new order of things down there; but when you introduce and open up new pathways upon the sea, the enterprising sailors of Cape Cod can take advantage of that and secure the benefits to themselves.

There is one point I intended to speak of, and that is in regard to a highway crossing by ferry. We produced here a petition signed by four hundred and twenty-two legal voters in the small town of Sandwich; right in the vicinity of the canal, and who would have occasion to use a bridge, if there was one here, or a ferry, if there was one, expressing their preference that

there should be a ferry in place of a bridge. A draw-bridge is cumbersome to be operated. There may be trains passing over it which would render highway travel at the same time dangerous: the draw may be open and vessels may be passing through, and there would be great delay; whereas with a steam-ferry, as soon as a vessel got clear in the canal, they could cross without any special delay.

Now it was attempted to break the force of that petition by calling certain witnesses in here to say that the people who signed their names to that paper did not know what they were about. The petition was a short one; there was no ambiguous language in it. It was a petition for a ferry in place of a drawbridge. The pretence was that the people who signed that petition did not know what they were signing; and now let us see how that fact was made to appear. They produced here three or four men who testified that the people did not know what they were doing. Did those men sign it? No; only one of them signed it, the others were opposed; and one of the men, after a diligent canvass of the community, got eight men to sign a paper, saying that they did not know what they were signing when they signed that paper; so we had nine names out of four hundred and twenty-two, — about two per cent that we may deduct. Well, there are about that per cent of people who do not know what they are about anyway. That cannot weaken the force of the petition in the least. Men generally know what they are doing when they sign a written document, and especially such a short one as this, and the feeble nature of the assault upon this petition is strong evidence in its favor.

Some of the gentlemen from Hyannis, or Wellfleet,

or Pocasset, who appeared before you, were quite hysterical over the idea that the canal might be dug and abandoned. There is ground for their fear that it may be dug. I think it is hardly necessary that I should seriously consider the possibility of its abandonment. But, even if it is abandoned, and even if the ocean did not fill it up, as it surely would, certainly a community, a large proportion of whom have many times circumnavigated the globe, would not be frightened at a ditch two hundred feet wide. But, gentlemen, I am taking too much of the time of the committee, and I will proceed no further.



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